Suter▪Wallauch▪Corbett
& Associates
Government Relations

January 12, 2009
Agenda Item 6.1

December 30, 2008

TO: Dennis Fay, Executive Director
Alameda County Congestion Management Agency

FR: Suter, Wallauch, Corbett & Associates

RE: Legislative Update

Gov Places Democrats' Flip-Fee Plan on Hold: The good news for Democrats is that the Governor didn't reject the revenue package out of hand. In addition, Republicans voted for the program reduction measures included in the plan. With conference calls between the Governor, Speaker Bass, and Pro Tem Steinberg continuing over the holiday break there remains optimism that an agreement can be reached and approved when the Legislature reconvenes next week.

What the Governor wants are the provisions he asked for in a stimulus plan, which include deregulation of some labor and environmental provisions to kick-start the economy, as well as expanding the use of public-private partnerships (PPP) for infrastructure projects and design-build contracting authority for highway projects. While the package approved on December 17th includes some of the Governor's request it does not go far enough. The existing package waives CEQA for a specific list of projects, expands the number of PPP that the CTC can select, and allows for the use of design-build contracting on the PPP projects.

With the Governor's threat of a veto, the "majority vote" package is being held in enrollment while negotiations continue. Included in the package was ACR 1X, which adjourns the First Extraordinary at midnight of the day that this measure is adopted by both houses, which was December 17th. Since this resolution also remains in enrollment the Legislature can pull it back and change the date in order to continue to hold the bills in enrollment and make further changes to this package.

Pooled Money: The next regularly scheduled meeting of the Pooled Money Investment Board (PMIB) is January 16th, but they might meet sooner. At the December meeting the Board halted all pending loans and ordered a review of all outstanding loans. The Board agreed to meet once the review is completed. The Board warned it may need to take immediate action to stop or wind down existing projects funded by the Board.

Transportation Bills: A center piece of the majority vote package is a radical overhaul of the transportation funding system with the intent to increase general fund tax revenue with a majority vote. The package would eliminate the excise tax on fuel, impose a 39 cent per gallon fuel fee, exempt specific transportation projects from CEQA, accelerate bond appropriations, and authorize each county to impose a local sales tax for mass transportation. The following summarizes the content of the transportation related measures. If you have any questions or need additional information about these measures or others in the package, please give us a call.

ABX 2: Eliminate Excise Tax – ABX 2 enacts the tax cuts and increases necessary to generate over $5 billion in new revenue to the state. This bill makes the following revenue neutral changes to the Revenue & Taxation Codes:

- Repeals the 18 cent per gallon excise tax imposed on the sale of gasoline and diesel fuel. The tax would become inoperative starting April 1, 2009, and the statute imposing the tax would be repealed on January 1, 2010.
- *Repeals the sales tax on the sale of gasoline. The sales tax continues to apply to diesel fuel. The tax would become inoperative starting April 1, 2009, and the statute imposing the tax would be repealed on January 1, 2010.
- Increase the state sales tax rate by ½ cent, effective February 1, 2009, which would generate $1 billion in the current year and $2.3 billion in the budget year.
- Impose an oil severance tax effective July 1, 2009, which would generate $845 million in 2009-10. It would not apply if oil is less than $30/barrel.
- Impose a 2.5% income tax surcharge for the 2009 tax year, which would generate $150 million in the current year and $1.5 billion in the budget year.

**ABX 2 specifies that the gasoline sales tax exemption does not apply to any tax levied by a city, county or district pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the Transaction and Use Tax Law.*

ABX 5 – CEQA Exemptions & Public Private Partnerships – ABX 5 exempts specified projects from CEQA if certain conditions are met, increases from 4 to 10 the number of Public-Private Partnerships that the CTC can select, and allows those projects to be delivered using the design-build procurement process.

<u>CEQA Exemption</u>: The bill would exempt from CEQA the following projects if specified conditions are met.

- Hwy 101 improvements from I-280 to Yerba Buena Road in Santa Clara.
- North Coast Corridor-State 1A project in San Diego County.
- Los Molinas improvement project on State Route 99 from Orange Street to Tehama Vina Road in Tehama County.
- Auxiliary lanes project on SR 99 from Calvine Road to Mack Road in Sacramento County.
- Island Park widening on SR 99 from Ashland Avenue to Avenue 7 in Fresno County
- Sacramento Intermodal track relocation project in San Joaquin County.
- Route 101 rehabilitation project in San Luis Obisbo County.
- Route 101 Doyle Drive project in the City and County of San Francisco.

For this exemption to apply the projects must meet the following conditions:

- Identify, review and consider the environmental impacts of the projects, including air pollution, greenhouse gas pollution, and community enhancements.
- Evaluate feasible alternatives.
- Mitigate significant and potentially significant environmental effects.
- Caltrans must conduct outreach efforts in the vicinity of the project.
- Comply with air quality regulations for construction practices.
- Employ measures that control particulate matter emissions.
- Where feasible, Caltrans and its contractors use alternative fueled equipment.

Public Private Partnership & Design-Build -- Existing law authorizes the California Transportation Commission (CTC) to select up to 4 projects public private partnership (PPP) projects (2 in the south and 2 in the north). ABX 5 increases the number to 10 projects (5 in the south and 5 in the north). Other key changes to existing law include eliminating the need for the Legislature to approve each project, but the proposed lease agreement must be submitted to the Legislature for review and comment prior to entering into the agreement. The sunset date to enter into a lease agreement is also extended from January 1, 2012 to January 1, 2014.

The bill also creates the Public Infrastructure Advisory Commission, which would be created within the Governor's Office of Planning and Research. The Commission would be charged with advising Caltrans and regional transportation entities on developing transportation projects through performance based infrastructure partnerships (aka-public-private partnerships). The Commission would act essentially as a clearing house for public-private partnership proposals and information.

ABX 5 also allows for the PPP projects to utilize the design-build procurement process. This process allows for a single contract for the design and construction of a project. The contract can also be awarded based on "best value" which allows for selection criteria other than lowest responsible bid. The design-build language in the bill is based on existing boiler plate language that is currently utilized by cities, counties, and transit operators. However, this language specifies that Caltrans is responsible for project development services and construction inspection.

ABX 6: Transportation Debt Service Fund – This bill makes the statutory changes needed to redirect transportation funds to the general fund. The bill makes the following changes:

- Amends the Transportation Debt Service Fund to also include the receipt of funds transferred from the State Highway Account. Existing law allows the Director of Finance to use funds in the Transportation Debt Service Fund to reimburse the general fund for the cost of debt service for transportation related bonds. The Public Transportation Account has been the primary revenue source for this Fund. SBX 3 makes numerous changes to the 2008-09 budget, and includes the transfer of $378 million from the State Highway Account to the Transportation Debt Service Fund.

- Directs the transfer tribal gaming compact revenue from transportation programs to the general fund. For the next 5 years approximately $100 million per year of gaming funds will be deposited into the General Fund.

- Transfers approximately $85 million in non-Article 19 funds annually from the Motor Vehicle Account (MVA) to the General Fund. These "non-Article-XIX" revenues are derived from the sale of documents, charges for miscellaneous services to the public, escheat of unclaimed checks, traffic violations; and civil and criminal violations.

ABX 7: Bond Appropriations – This measure amends the 2008-09 budget to appropriate additional infrastructure bond funds. This bill appropriates $2.9 billion in additional infrastructure bonds from Propositions 1B, 1C, 1E, and Proposition 84.

- $800 million for public transit capital projects. These funds are allocated pursuant to the State Transit Assistance formula.

- $700 million for local street and road projects. Of this amount, $442 million is allocated to counties and $258 million is allocated to cities.

- $500 million of Corridor Mobility Improvement Account (CMIA) funds for projects already approved by the CTC.

- $200 million for the State and Local Partnership Program (SLPP). Most of these funds are allocated pursuant a formula, and this appropriation doubles the amount of SLPP funds available in the current fiscal year.

- $170 million for SR 99 projects.

- $110 million for Trade Corridor Improvement Fund projects. This appropriate will allow out year projects to be advanced into 2009.

- $60 million in Prop 1C Infill Development Funds. These funds will be used for project funded through the California Recycle Underutilized Site program (CalReUSE), which focuses on Brownfield cleanup projects are infill sites.

- $30 million in Housing Related Park funds. This appropriation will allow HCD to award funds in 2009.

- $100 million in Integrated Regional Water Management Plan funds. This appropriation provides Prop 84 funds for priority water supply reliability projects.

- $100 million in Prop 1E stormwater and flood funds. These funds will be disbursed to local agencies to prevent and mitigate the effects of flash flooding and mudslides associated with winter rains in fire damaged areas.

- $100 million in Prop 84 park maintenance funds. These funds will be used for state park maintenance and rehabilitation projects.

SBX 3: Budget Cuts – This bill amends the 2008-09 Budget Act to make numerous funding adjustments to health and welfare programs, corrections, public safety, and transportation. Specifically, SBX 3 reduces funding for the State Transit Assistance program from $306 million to $150 million in the current fiscal year. In addition, the bill transfers $378 million from the State Highway Account to the Transportation Debt Service Fund.

SBX 6: Local Transportation Fund – In an effort to alleviate the impact this budget proposal will have on public transit funding, SBX 6 would authorize each county to seek voter support to increase the sales tax rate by ¼ cent. The proceeds of this revenue must be deposited into the Local Transportation Fund, which is were the sales tax revenue from the existing ¼ cent sales tax. The revenue in the Local Transportation Fund must be used primarily for public transportation purposes. The bill specifies that the sales tax proposal must comply with Section 2 of Article 13C of the State Constitution. This article defines the vote requirement for a general tax and special tax. It is debatable whether this tax proposal could be considered a general tax and thus requires only a majority vote.

SBX 9: Single Flip – This measure simply redefines the term "revenue exchange period" to mean the period on or after July 1, 2004 and before April 1, 2009. This simple definition change would undo a portion of the "Triple Flip" and thereby increase the local Bradley-Burns sales tax rate by ¼ cent and eliminate the need for the state to backfill cities and counties.

In order to finance the economic recovery bonds, the state made three fund shifts. It reduced the Bradley-Burns rate by ¼ cent and then increased the state rate by the same amount. The new state rate was dedicated to paying for the bonds. To backfill the loss to local governments, the state gave to cities and counties more property tax revenue. The Single Flip proposal redefines the term "revenue exchange period" in order to eliminate the state's requirement to backfill local governments, which would then result in an automatic increase of the Bradley-Burn rate by ¼ cent. Because property tax revenue has grown faster than sales tax revenue over the past few years, the state would realize a $1.6 billion savings if the backfill portion of the triple flip is ended. However, with declining property values the value of the backfill will also decline, which may result in some winners and losers at the local level if this proposal is enacted.

SBX 11: Fuel Fee – Starting on April 1, 2009, this measure would replace the excise tax on fuel, which was removed by ABX 2, with a 39 cent per gallon fee on gasoline and a 31 cent per gallon fee on diesel fuel. The fee would be adjusted every three years pursuant to the California Consumer Price Index. The revenue generated would backfill the loss of excise tax revenue and sales tax revenue on gasoline. The fee would generate approximately $7 billion annually and would be allocated as follows:

- 45% to the State Highway Account, or about $3.1 billion, of which at a minimum 20%, or about $620 million annually, is dedicated to funding projects through the STIP process. The remaining revenue is used for state highway maintenance and operations.
- 33%, approximately $2.3 billion each year, to cities and counties for local street and road maintenance projects. The allocation method is structured to match or exceed the amount of revenue cities and counties would have received through Prop 42 and the gas tax subvention process. The first allocation round would match the dollar amount pursuant to the gas tax subvention formula. The remaining revenue would then be allocated to cities and counties pursuant to the Prop 42 formula for local streets and roads, where half is allocated to cities based on population and half to counties based on road miles and registered vehicles.
- 22% to the Transportation Stabilization Fund, or about $1.5 billion a year. The Transportation Stabilization Account is a new account subject to appropriation by the Legislature. The use and purpose of this fund is not defined and subject to future legislation.

Additional elements:

- All existing exemptions to the excise tax apply to the proposed fee. Public transit operators and other public entities would not be required to pay the fee.
- While Section 1 of Article 19 of the State Constitution only applies to taxes imposed on motor vehicle fuel, the background material for SBX 11 claims the same restriction would apply to this fuel fee. Rather than rewrite the entire Revenue & Taxation Code, SBX 11 simply requires the Board of Equalization to collect and administer this fee in the same manner as the excise tax is collected, which may somehow infer Article 19 protections. This means that the fee revenue cannot be used for transit projects or operations, other than fixed guideway projects.
- *Public Transportation Account:* This proposal will reduce funding to the PTA by about $345 million annually through the elimination of Prop 42, spillover revenue, and the sales tax on gasoline. However, approximately $400 million per year will flow into the account because the sales tax on diesel fuel remains, which historically is the primary source of PTA funding. This should provide State Transit Assistance at least $200 million annually. Unfortunately, the plan is to cap STA at $150 million in the current year and in future years. While this is a major blow to transit funding, the Governor continues to call for the repeal of the STA program.